

United States House Committee on Foreign Affairs
“Proposed Small Arms Transfers: Big Implications for U.S. Foreign Policy”

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Chairman Bera, Ranking Member Zeldin, and other distinguished members of the House Foreign Affairs Committee’s Oversight and Investigations Subcommittee, thank you for inviting the F.A.I.R. Trade Group to testify today on this important issue of reform to our export control regulations, and the perceived impact such reform may have on our national security and foreign policy.

The F.A.I.R. Trade Group is made up of firearms and ammunition manufacturers, importers and exporters who serve both civilian and government customers. We work closely with U.S. federal agencies, such as the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. Department of State, and U.S. Customs and Border Protection, among others, to improve regulations governing the import and export of firearms, ammunition, and other military articles.

Almost a year ago, the Administration published the last in a series of proposed rules to reform the U.S. export control system; which reform initiative began in 2010 under the Obama Administration. The proposed rules that are at the heart of today’s hearing are to transition commercially available firearms from the export controls of the U.S. Department of State’s *International Traffic in Arms Regulations* (ITAR) to the controls of the U.S. Department of Commerce known as the *Export Administration Regulations* (EAR). It is interesting to note that when the Obama Administration launched the Export Control Reform (ECR) initiative, the ITAR U.S. Munitions List (USML) Categories I, II, and III, the Categories that control firearms and ammunition, were the first categories to be revised. The fact that the rules were not rolled out until May 2018 does not make it a creation of President Trump.

Although no longer branded “ECR,” the proposed rules to revise Categories I, II and III are a continuation of the U.S. Government’s effort to modernize U.S. export controls and better focus ITAR controls over those weapons or articles that are inherently for military use or that provide the United States with a critical military or intelligence advantage. The purpose of the proposed revisions to the USML is to adjust the scope of the Department of State’s jurisdiction to focus on those weapons or articles that are inherently for military use, or that provide the United States with a critical military or intelligence advantage. All other items will transition to the export controls of the Department of Commerce, as has happened for all previously implemented reform efforts. What is being proposed for USML Categories I, II, and III is nothing new.

Since the publication of the proposed rules for USML Categories I, II, and III, there has been a plethora of misinformation and mischaracterizations of the proposed rules. Indeed, these distortions, many of which are politically motivated, have given rise to the current attempts to prevent the President from exercising authority which Congress originally granted under the Arms Export Control Act.

The fact is, the proposed transition rules are not a decontrol over the manufacture, transfer, or export of firearms or ammunition. The proposed changes are an effort to reform outdated regulations and right-size our export control system. The proposed shift in oversight responsibility is long overdue and will help strengthen the national security of the United States by ensuring that export licensing authorities can focus on those items that warrant control under the ITAR rather than waste resources on export licensing for springs and bolts for items that are abundant throughout the world. In addition, this reform is absolutely necessary to ensure “America’s ability to engage effectively with the rest of the world and keep our most sensitive technology away from those who would do us harm.”

These are not my words. These are the words of Defense Secretary Gates in 2010, when President Obama issued the directive to overhaul the overly complicated U.S. export controls system, a system with too many redundancies to effectively support the national security and foreign policy interests of the United States. By modernizing U.S. export controls, we could more effectively account for emerging critical technologies, whose exports would be subject to closer scrutiny than those items readily available at Walmart or hardware stores.

Items that Have Already Transitioned from State to Commerce Export Controls

Since the Obama Administration first rolled out ECR in 2010, several items once classified as defense articles and subject to ITAR licensing controls of the Department of State have moved over to the licensing controls of the Department of Commerce. The following USML categories were revised under the Obama Administration:

- Launch vehicles and missiles;
- Explosives and propellants
- Vessels of War
- Tanks and military vehicles
- Military aircraft
- Training equipment
- Personal protective equipment
- Military electronics
- Fire control
- Toxicological agents
- Spacecraft and satellites
- Nuclear weapons
- Directed energy weapons
- Gas turbine engines
- Submersible vessels

The list of items that have already moved off the U.S. Munitions List and over to the Commerce Control List is extensive. Every single one of these items is subject to the same set of controls that

commercially available firearms and ammunition would be, including the treatment of information published on the Internet.

Military Weapons Will Stay Controlled Under ITAR

Under the proposed transition rules, military weapons will remain under the State Department licensing authority. As I stated earlier, fully automatic firearms will remain under USML Category I. A fully automatic firearm includes those firearms that have the option to select either a semi-automatic function, a two or three-round burst function (in other words it fires two or three rounds with a single pull of the trigger), and also a fully automatic function. These firearms, known as “select-fire” firearms, are well recognized as military weapons. These should not be confused with purely semi-automatic firearms. To that end, some argue the AR15 rifle, a purely semi-automatic rifle, is a military-style weapon. It is not, and it should not be conflated with a rifle that has full automatic capabilities. AR15-type rifles are not used in the military, and to say there is little difference between a semi-automatic firearm and a fully automatic firearm is disingenuous. Congress itself recognized this substantial difference when it established the National Firearms Act of 1934, which imposed significant restrictions on civilian possession of fully automatic firearms, but not on semi-automatic firearms.

While it is true that soldiers in combat may use fully automatic firearms in semi-automatic mode, this is dependent on the situation and threat level. In close quarters, the military trains shooters to engage targets with controlled pairs (two shots). If fire suppression is needed, then full auto is more effective at keeping the enemy down and permits freedom of movement by friendly forces. The use of semi or single shot or controlled pair is more prevalent but it is mostly a matter of ammunition consumption so as not to waste ammunition. For the soldier, the full auto option offers reassurance and a tactically sound choice. It provides lethality overmatch and makes a smaller fighting force more effective.

The AR15, a sporting rifle that has been widely available on the commercial market since 1963, cannot and must not be grouped in the same category as the assault weapon described above. The semi-automatic AR15 (or other model) rifle does not have the design features that allows it to accept a full automatic sear that changes its design into a machinegun capable of shooting automatically. Indeed, the current effort to reform our export control laws will allow the U.S. Government to focus more on controlling true military assault weapons.

Domestic Controls over Firearms and Ammunition

Any reforms to our export control system will not affect in any way domestic controls over firearms and ammunition. The Bureau of Alcohol, Tobacco, Firearms and Explosives is the agency in charge of enforcing the Gun Control Act and the National Firearms Act, and these statutes will continue to regulate the manufacture, transfer and possession of firearms and ammunition.

ATF controls over firearms in the United States extends to 3D printed guns. The Gun Control Act prohibits the manufacture, import, sale, shipment, delivery, possession, transfer and receipt of any handgun that is undetectable by x-ray machines commonly used at airports. Violations of this statute are punishable by up to five years imprisonment and a fine of \$250,000. The last time this prohibition was due to sunset in 2013, Congress passed a renewal unanimously by voice vote.

U.S. Department of Commerce Export Controls

1. Export License Requirements

It is important to remember that not all firearms and ammunition are slated to transition to Commerce controls. The firearms that will remain under the Department of State are those that are inherently military, including fully automatic firearms, regardless of the caliber, fully automatic shotguns, magazines and drums with a capacity of 50 rounds or greater, and all specially designed parts and components therefor. The types of ammunition that will remain with the Department of State include ammunition preassembled into links or belts, and projectiles with a core or projectile produced from tungsten, steel, or beryllium copper alloys (also referred to as armor piercing ammunition).

Contrary to many of the objections that have been voiced about the proposed rules, the transition of firearms and ammunition from State Department's oversight to the Department of Commerce's control will NOT result in a decontrol or a deregulation of these articles. Firearms transitioning to the Department of Commerce will be subject to licensing controls under National Security, Regional Stability, Crime Control and Detection, the Firearms Convention, United Nations Sanctions, and Anti-Terrorism. Indeed, the proposed rules make it abundantly clear that the Commerce Department will require U.S. Government authorization to export or reexport firearms or ammunition transitioning from the USML to ANY country, including Canada. The transition will not result in the unlicensed export of firearms and ammunition.

It must be emphasized that the proposed changes are to license processing, NOT POLICY. End-use monitoring will continue, including vetting of potential end-users, and contrary to popular belief, the State Department, as well as the Department of Defense will remain very involved in the review of export license applications for national security and foreign policy reasons. Commerce Department will continue to staff license requests to executive agencies for review, just as State Department has done under ITAR. Of course, we must not forget the fact that the Commerce Department, like the State Department today, will not approve any license application if the export will violate the laws of the destination country.

2. Office of Export Enforcement

Another myth is that the Department of Commerce does not have the capability to control firearms or ammunition exports, or has looser licensing rules and procedures. In reality, the Department of Commerce has an arsenal of tools it can use, and indeed does use already to effectively control exports and enforce against export violations, including those that have not yet occurred.

The Department of Commerce, Bureau of Industry and Security (BIS) Export Enforcement consists of the Office of Export Enforcement (OEE), the Office of Enforcement Analysis (OEA), and the Office of Antiboycott Compliance (OAC). The overarching mission is to protect the U.S. national security, homeland security, foreign policy and economic interests through a law enforcement program focused on: sensitive exports to hostile entities or those that engage in onward proliferation; prohibited foreign boycotts; and related public safety laws. BIS's Export Enforcement is an elite law enforcement organization recognized for its expertise, professionalism, integrity, and accomplishments. It accomplishes its mission through preventative and investigative enforcement activities and then, pursuing appropriate criminal and administrative sanctions against export violators.

In particular, the Office of Export Enforcement is dedicated to protecting U.S. national security, foreign policy, and economic interests by investigating violations, prosecuting violators of export control laws, interdicting illegal exports, and educating parties to export transactions on how to improve export compliance practices. To accomplish this, OEE Special Agents work with Commerce Department licensing officials and policy staff to deter the export of items which, in the hands of unreliable users, can prove damaging to U.S. national security and foreign policy interests.

Noteworthy is the fact that Commerce enforcement of export controls is carried out by Special Agents, sworn federal officers with "authority to bear firearms, make arrests, execute search warrants, serve subpoenas, detain and seize items about to be illegally exported, and order the redelivery to the United States of items exported in violation of U.S. law." Indeed, OEE is the only federal law enforcement agency exclusively dedicated to the enforcement of export control laws, specifically the EAR, and it works closely with the Department of Justice to prosecute criminal violations, and with the Office of Chief Counsel for Industry and Security for civil enforcement cases.

Under the ITAR, the State Department's Office of Defense Trade Controls Compliance investigates export violations. This office is comprised of Compliance Specialists who are not law enforcement officers.

What does this all mean? Stated plainly, this means that the Commerce Department already has in place the resources to send special agents to investigate suspected violations of the EAR. And, they do. This includes investigating suspected export violations by U.S. persons, as well as suspected unauthorized reexports or transfers by foreign persons. As outlined on OEE's website, OEE Special Agents also conduct end use checks to confirm items are being used in accordance with any license conditions, as well as to assess the suitability of foreign end-users to receive U.S.-origin licensed goods and technology, assess prospective end-users on pending license applications for diversion risk, and conduct educational outreach to foreign trade groups.

In a recent Commerce publication, *Don't Let This Happen To You* (Nov. 2018), in fiscal year 2017, BIS investigations led to the criminal convictions of 31 individuals and businesses for export

violations with penalties of over \$287 million in criminal fines, more than \$166 million in forfeitures, and 576 months of imprisonment. In addition, OEE and BIS's Office of Chief Counsel completed 52 administrative export matters, resulting in over \$692 million in civil penalties." In contrast, in 2017 and 2018 combined the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) issued only two consent agreements.

Fostering Competitiveness of the American Manufacturer

Another unfortunate truth of our current export control system is the unintended harm on our ability to provide weapons to our allies. It is no secret that many foreign governments restrict bidding on supply contracts to non-ITAR-controlled product. This affects U.S. manufacturers from being able to sell firearms and firearm components, all controlled under the ITAR. To illustrate, let me draw your attention to a French tender for semi-automatic pistols. Although it does not specifically reference "ITAR-free," the governing French legislation requires the applicant offer:

1. A certification according to which the offeror will be able to meet all obligations in terms of export, import, transfer and transit of defense articles related to the awarded contract, including those obligations contained in any other document related to such tender; and
2. The indication of any restrictions resulting from any security or export-control regime applicable to such offeror and/or its defense articles or services and which affects the disclosure, transfer and/or usage of such defense articles and/or defense services (i.e. maintenance services, product support services, etc.).

The legislation does not cite to the ITAR precisely. However, because of the inherent controls of the ITAR that affect all U.S.-origin defense articles and services, especially in terms of prior export license and the required prior approvals from the Department of State for reexports or retransfers, the above provisions of the French legislation nearly eliminate any chance for success in proposing US-origin ITAR-controlled defense articles and/or services in response to this tender (and to any tender for defense articles and services issued by the French Government).

On the contrary, this situation does not replicate among E.U. Member States to the extent that, E.U. member states have agreed to principles of mutual trust and reciprocity between the Member States' export control policies and procedures for the defense sector so that once delivered to one Member State, defense articles and/or services from another Member State are controlled onward only by the recipient Member State export control policies and procedures.

Another example is the restriction on countries sourcing product made with U.S. – origin components and parts. The ITAR restrictions on reexport attach to each defense article, so that even for ITAR-controlled parts and components that are incorporated into a non-U.S. end-item, the end-item becomes subject to the ITAR requirement for advance U.S. Government approval for nearly all reexports. At this time, *all* firearm parts and components and accessories are subject to

ITAR export and reexport controls, with very few exceptions. Regardless of the size of the part, whether it be a bolt or a spring, or a barrel or a receiver, the part is subject to ITAR restrictions on reexports. In many cases, the process for obtaining such reexport approval has resulted in significant and even detrimental delays, even when the reexport is for ally governments. Consequently, there is a push to reduce U.S.-made components from defense products so as not to be burdened with the reexport restrictions under ITAR.

Our allies are shunning U.S. products because of ITAR, both because of unreliable delivery and the inability to reexport. The result is they source their products from other countries, including Russia and China. This poses a significant threat to our national security, because not only is the U.S. removed from the immediate supply chain (including potential U.S. government oversight thereof), but long term we are isolated from the replacement and repair market. This has very significant consequences on the American defense sector, not the least of which is the firearms and ammunition manufacturers.

Conclusion

Because of the age and wide-scale availability of the underlying technology, most firearms do not possess characteristics or parameters that provide a critical military advantage to the United States, nor are firearms exclusively available from the United States. In fact, it is these points that make the current system of export controls particularly harmful to U.S. industry, and indeed U.S. national security because of global competition and the inability of U.S. firearms companies to compete with foreign sources.

The policies and regulations currently in place have not prevented firearms or the related technology from going to restricted places. Indeed, to our detriment they have only prevented the U.S. firearms industry from becoming reliable suppliers to our NATO and non-NATO allies, and in general competing effectively in the global market place. Similar to the challenges faced by other defense industries, the firearms trade has been negatively impacted by the incentives of foreign companies and governments to avoid U.S.-origin firearms. Our inability to effectively compete globally will undermine our firearms manufacturing base by inducing U.S. companies to move production offshore. This will affect jobs and domestic production levels, thus weakening the US Defense Industrial base.

In conclusion, F.A.I.R. Trade Group supports the Administration's continued efforts to reform and modernize our export control system. We urge Congress to permit the right-sizing of the long-standing one-size-fits-all export policy for firearms and ammunition, and allow the firearms and ammunition sector to be regulated as other defense sectors are. This reform will not result in the decontrol of firearms or ammunition, and is critical to the positioning of our manufacturers in the world market and thus our national security. It is time to control exports of firearms and ammunition as we do all other sectors in the defense industry, and we look to this Committee to ensure this occurs.

Chairman Bera, Ranking Member Zeldin, and other distinguished members of the House Foreign Affairs Committee's Oversight and Investigations Subcommittee, this concludes my testimony. On behalf of the members of F.A.I.R. Trade Group, thank you for the opportunity to testify, and I look forward to your questions.